

1      **Thomas P. Riley, SBN 194706**  
2      **LAW OFFICES OF THOMAS P. RILEY, P.C.**  
3      **First Library Square**  
4      **1114 Fremont Avenue**  
5      **South Pasadena, CA 91030-3227**

6      **Tel: 626-799-9797**  
7      **Fax: 626-799-9795**  
8      **TPRLAW@att.net**

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10     **Attorneys for Plaintiff**  
11     **J & J Sports Productions, Inc.**

12                   **UNITED STATES DISTRICT COURT**  
13                   **NORTHERN DISTRICT OF CALIFORNIA**

14  
15     **J & J Sports Productions, Inc.,**

16                   **Case No. CV 08-0998 JF**

17                   **Plaintiff,**

18                   **vs.**

19     **Salvador Medinarios, et al.**

20                   **PLAINTIFF'S AFFIDAVIT IN**  
21                   **SUPPORT OF PLAINTIFF'S**  
22                   **APPLICATION FOR DEFAULT**  
23                   **JUDGMENT BY THE COURT**

24                   **Defendant.**

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25                   **PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S APPLICATION**  
26                   **FOR DEFAULT JUDGMENT BY THE COURT**

27                   **STATE OF CALIFORNIA**

28                   )

                     ) ss:

**COUNTY OF SANTA CLARA**

)

29  
30     I, JOSEPH M. GAGLIARDI, being duly sworn, deposes and states the  
31     following:  
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1       1. I am the President of Plaintiff, J & J SPORTS PRODUCTIONS, INC.,  
2 and as such I am fully familiar with the facts, circumstances, and proceedings  
3 heretofore had herein.

4       2. I make this affidavit in support of Plaintiff's request to recover statutory  
5 damages, including attorneys' fees, investigative costs, and interest in the within  
6 request for judgment by default.

7       3. Our company J & J Sports Productions, Inc., is a closed-circuit distributor  
8 of sports and entertainment programming. Our company purchased and retains the  
9 commercial exhibition licensing rights to the *Fernando Vargas v. Shane Mosley*  
10 *Championship Fight Program* (hereinafter "Program") which was broadcast on  
11 February 25, 2006. Our company thereafter marketed the sub-licensing (commercial  
12 exhibition) rights in the Program to our company's commercial customers (i.e., casinos,  
13 racetracks, bars, restaurants, and nightclubs).

14       4. Simultaneously with the advent of pay-per-view programming, we began  
15 to experience a serious erosion in the sales of our own proprietary programming to our  
16 commercial customers throughout the United States of America. To protect ourselves,  
17 we endeavored to find out what was the basis for the erosion and determined from our  
18 customers that the cause of the erosion of our customer base was the rampant piracy of  
19 our broadcasts by unauthorized and unlicensed establishments (signal pirates).

20       5. In response, we embarked upon a nationwide program to police our  
21 signals for the purpose of identifying and prosecuting commercial establishments  
22 which pirate our programming (including the *Fernando Vargas v. Shane Mosley*  
23 *Championship Fight Program*, the subject program involved in this lawsuit).

24       6. Specifically, J & J Sports Productions, Inc., retained, at considerable  
25 expense, auditors and law enforcement personnel to detect and identify signal pirates.

1 To ensure that only illegal locations were visited by the auditors, our company  
2 compiled our confidential list of customers (authorized and legal locations) who paid  
3 the required license fee to broadcast the Program, and this list was distributed to  
4 participating auditing and law enforcement agencies in strict confidence.

5       7. The above referenced *Program* contained several televised under-card  
6 bouts, color commentary, along with the main event prizefight between Fernando  
7 Vargas and Shane Mosley. As set forth within the sworn Affidavit of Noe Longoria, it  
8 was the beginning of third round of the undercard bout between Jhonny Gonzalez and  
9 Mark Johnson that was observed by Mr. Longoria as being *unlawfully* exhibited by the  
10 establishment doing business as "The Derby" on Saturday, February 25, 2006, as at no  
11 time did this establishment ever lawfully license the *Program* from our company for  
12 such a purpose.

13       8. It is essential that I communicate to the Court that to the best of my  
14 knowledge our programming is *not* and cannot be mistakenly, innocently or  
15 accidentally intercepted. Some methods that a signal pirate can unlawfully intercept  
16 and broadcast our programming are as follows without limitation:  
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- 19           A. The use of a "blackbox", "hotbox", or "pancake box" which is  
20 purchased for a fee and when installed on a cable TV line will  
21 allow for the descrambled reception of a pay-per-view broadcast,  
22 or  
23           B. The use of a "smartcard" or "test card" or "programming card"  
24 which is purchased for a fee and when installed on a DSS satellite  
25 receiver line will allow for the descrambled reception of a pay-per-  
26 view broadcast, or  
27  
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- 1 C. The purposeful misrepresentation of a commercial establishment as
- 2 a residential property to allow the fraudulent purchase of a pay-per-
- 3 view (or prohibited) programming at the residential rate, or
- 4 D. The use of illegal cable drop or splice from an apartment or home
- 5 adjacent to the commercial establishment premises (which would
- 6 purchase the broadcast at a residential price and divert the program
- 7 to the commercial establishment), and/or
- 8 E. The purchase of other illegal unencryption devices, and the
- 9 purchase of illegal satellite authorization codes which are readily
- 10 available on the internet, in trade publications, and through "word
- 11 of mouth".

12 9. Turning these facts to the matter before the Court I have been advised by  
13 counsel that the Court has wide discretion in the awarding of statutory damages for the  
14 nefarious, illegal and debilitating activities of signal pirates which are injurious to our  
15 company and our lawful customers.

16 10. It is respectfully submitted to this Honorable Court that the unchecked  
17 activity of signal piracy not only has resulted in our company's loss of several millions  
18 of dollars of revenue, but also has a detrimental effect upon lawful residential and  
19 commercial customers of cable and satellite broadcasting whose costs of service are  
20 increased significantly by these illegal activities, including the depravation of tax  
21 revenue to the communities where our potential customers reside, and the denial of  
22 benefits such tax revenue would provide the residents of such communities.

23 11. We, at J & J Sports Productions, Inc., believe that the persistent signal  
24 piracy of our programming costs our company, our customers, and their communities,  
25 millions of dollars annually resulting in part, from the perceived lack of consequences  
26 (including nominal or minimal damage awards by the Courts who hear our cases) for  
27 such unlawful interception and exhibition by the commercial signal pirates.

1       12. For these reasons I ask this Honorable Court to grant the **maximum**  
2 allowance for statutory damages due to the fact that such actions are *per se* intentional  
3 and do not and cannot occur without the willful and intentional modification of  
4 electronic equipment, the willful and fraudulent misrepresentation of a commercial  
5 establishment as a residential one, the removal of cable traps or devices designed to  
6 prevent such unauthorized exhibits, or other willful and/or intentional acts purposely  
7 designed to obtain our programming unlawfully.

8       13. I am also troubled by the fact that the Courts have placed undue weight  
9 upon whether the *promotion* of programming by the signal pirates (rather than the  
10 *exhibition* of the programming itself) was done willfully and/or for commercial  
11 benefit. I would ask the Court to recognize that the willful and purposeful acts  
12 necessary to intercept and exhibit the programming precede whatever steps are, or are  
13 not taken, by the pirate establishment to promote our programming to their customers.  
14

15       14. I would also ask the Court to recognize that the pirates do not generally  
16 advertise the fact that they intend to exhibit our programming unlawfully to the public  
17 for the practical reason that they wish to avoid the unessential risk of detection. This  
18 of course does not preclude the very real possibility fact that the unlawful exhibition  
19 may well have been promoted by word of mouth or advertising that went undetected  
20 by the auditors, to their own customers to increase their financial gain on the night our  
21 fights are broadcast at their establishment.  
22

23       15. In addition, it is extremely unlikely that a pirate establishment would  
24 increase the costs of food or drink on the evening they broadcasting one of our  
25 programs unlawfully. In my personal experience gained through many years in the  
26 promotion industry, it is most uncommon that even our legal locations would employ  
27 such a method to recover some of our commercial license fee back from their own  
28

1 customers. I would point out however that since our auditors do not benchmark the  
2 prices charged for food or drink at the pirate locations subsequent to conducting the  
3 field surveillance on the evening our programming is broadcast, it is undetermined  
4 whether the prices paid by an auditor at a pirate location on fight night are in fact less  
5 than or equal to the normal prices charged by the pirate establishments.  
6

7 16. I also believe it particularly important that the Court understand that the  
8 overwhelming majority of pirate establishments do not, and likely will not, ever charge  
9 a cover or door charge to their customers on the evening our programming is  
10 exhibited. To do so would defeat the very purpose of pirating on programming in the  
11 first place: to lure or retain patrons who seek to be entertained by our programming. If  
12 the pirate demanded a cover charge of its patrons then the competitive advantage he or  
13 she held over our lawful customers (who regularly impose a cover charge), would  
14 dissipate and the pirate's patrons would be faced with a choice of viewing our  
15 programming at the pirate establishment or at our lawful customer's locations where  
16 the broadcast environment may be much more attractive (i.e., more monitors, bigger  
17 monitors, no risk of interference or interception, etc.).  
18

19 17. Clearly, this establishment with multiple television monitors, and a  
20 physical location in a major metropolitan area, had no justification to steal our  
21 programming and exhibit it for its own financial benefit, except to deny our company  
22 the commercial license fee to which was rightfully entitled.  
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**WHEREFORE** I respectfully request that this Court grant our request for enhanced statutory damages and our prayer for actual damages, plus our legal costs along with the attorneys' fees counsel has requested, and that such amounts be awarded against each of the defendants named in this action and in our favor.

Respectfully submitted,

Dated: June 30, 2008

**JOSEPH M. GAGLIARDI**, President  
J & J Sports Productions, Inc.

Sworn to before me on this \_\_\_\_\_ day

Of \_\_\_\_\_, 2008

NOTARY PUBLIC

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See attached document

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- See Attached Document (Notary to cross out lines 1–6 below)  
 See Statement Below (Lines 1–5 to be completed only by document signer[s], not Notary)

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Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this

30<sup>th</sup> day of June, 2008, by  
 Date Month Year

(1) Joseph M. Gagliardi,  
 Name of Signer

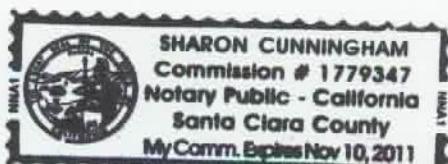
proved to me on the basis of satisfactory evidence  
 to be the person who appeared before me (.) (.)

(and)

(2) n - a,  
 Name of Signer

proved to me on the basis of satisfactory evidence  
 to be the person who appeared before me.)

Signature Sharon Cunningham  
 Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Further Description of Any Attached Document**

Title or Type of Document: Plaintiff Affidavit

Document Date: June 30, 2008 Number of Pages: 13

Signer(s) Other Than Named Above: none

The Derby February 25 2006

RIGHT THUMPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMPRINT OF SIGNER #2
Top of thumb here

**PROOF OF SERVICE (SERVICE BY MAIL)**

I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, California 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On July 1, 2008, I served:

**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR DEFAULT JUDGMENT BY THE COURT**

On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

Salvador Medinarios (Defendant)  
2036 Ridgemont Drive  
San Jose, CA 95148

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed on July 1, 2008, at South Pasadena, California.

Dated: July 1, 2008

/s/ Terry Houston  
**TERRY HOUSTON**